

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0516
Sales and Withholding Tax
For the Years 1999-2000

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ISSUE

I. Sales and Withholding Tax- Imposition of Penalty and Interest

Authority: IC 6-2.5-9-3, IC 6-3-4-8 (f).

The taxpayer protests the imposition of penalty and interest.

STATEMENT OF FACTS

The taxpayer was an officer of a corporation that is no longer in business and has unpaid trust taxes. The Indiana Department of Revenue, hereinafter referred to as the "department," personally assessed the unpaid trust taxes, interest, and penalty against the taxpayer. The taxpayer agreed that he was personally liable for the trust taxes. However, he protested the assessment of interest and penalty against himself personally. In response to the protest, a hearing was scheduled. The taxpayer did not appear for the hearing. As a result, this Letter of Finding is based upon the information in the file.

I. Sales and Withholding Tax- Imposition of Penalty and Interest

DISCUSSION

The taxpayer agreed that he was an officer responsible for the payment of the taxes. He contends, however, that only the corporation would be responsible for the payment of the interest and penalty of the taxes which were not remitted to the state.

The proposed penalty and interest liability attributable to the corporation's sales tax liability was personally assessed against the taxpayer under authority of IC 6-2.5-9-3 which provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed penalty and interest attributable to withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8 (f), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

The law authorizes the assessment of tax liability, interest, and penalties against responsible officers. Therefore, the interest and penalties were properly assessed against the taxpayer.

FINDING

The taxpayer’s protest is denied.